

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16393
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On January 3, 2002, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioner), asserting income tax, penalty, and interest in the amount of \$4,079 for the taxable years 1997 through 1999. The notice advised the petitioner that he could petition the Tax Commission for a redetermination if he disagreed with the deficiency determined by the Bureau.

On March 6, 2002, the petitioner filed a protest that the Commission treated as a petition for redetermination. The petitioner elected not to participate in an informal conference and instead chose to rely on the information he submitted in a previously protested matter, referenced as docket no. [Redacted].

Therefore, the Commission's decision in this matter is based on the current file of the Bureau and the Commission's file in docket no. [Redacted]. The Tax Commission has reviewed the files, is advised of their contents, and now issues this decision. For the reasons set forth below, the Commission affirms the deficiency determined by the Tax Discovery Bureau.

This is a nonfiler case. The petitioner failed to file both federal and Idaho individual income tax returns for the 1997 through 1999 taxable years. The petitioner lived in [Redacted], Idaho during those years. He received wages and compensation from several businesses. The businesses reported, on standard W-2 forms, that they paid wages to the petitioner. The combined amount of wages paid by the businesses ranged from approximately \$15,000 to \$25,000 during each taxable year.

A Tax Enforcement Specialist (specialist) of the Bureau reviewed this information and determined the petitioner was an Idaho resident with gross income of a sufficient amount as to require the petitioner to file Idaho returns. In a letter dated August 1, 2001, the specialist asked the petitioner to provide additional information to determine whether or not the petitioner had a filing requirement for the taxable years 1997 through 1999.

The petitioner responded and stated that, despite the wages reported on his W-2 forms, he was not required to file an income tax return or pay income taxes. The petitioner asserted that no statute required him to file a return and that his wages were not “income.”

The specialist recognized the petitioner’s arguments as tax protestor arguments which the Commission has previously addressed and rejected. Therefore, after receiving the petitioner’s response, the specialist prepared provisional returns for the 1997 through 1999 taxable years, relying on wage information reported on the W-2 forms to determine the petitioner’s gross income. The specialist provided the petitioner with personal exemptions, standard deductions, and grocery credits. The provisional returns indicated a deficiency existed and the specialist issued a Notice of Deficiency Determination as set forth above. The Notice of Deficiency Determination included an explanation of the determination, a copy of the provisional returns prepared by the specialist, a document showing the calculation of interest, and an explanation of the petitioner’s right to request a redetermination.

The petitioner seeks a redetermination of the deficiency determined by the Bureau on several grounds. The petitioner asserted he was not required to report the W-2 income or pay federal and Idaho income tax because: (1) wages are not “income” subject to tax; (2) he is sovereign citizen of the Constitutional Republic of America rather than a resident of the state of Idaho; and (3) the Tax

Commission did not have the authority to determine the amount of tax he owed or to issue a Notice of Deficiency Determination.

State and federal courts have rejected these common tax protestor themes time and time again. In Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, Judge Easterbrook penned,

Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. “Tax protesters” have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead--so tax protesters think--to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.

The petitioner asserts some of the same arguments discussed by Judge Easterbrook. He believes his tax obligation has somehow been eliminated despite the fact that he resided in Idaho and earned a living. Simply stated, the petitioner’s arguments are not supported by fact or law.

The petitioner claims he is exempt from taxation under the Idaho Income Tax Act because he earns no money and is not involved in “commerce.” The petitioner argues the term "income" is not defined under state or federal law and that the U.S. Supreme Court said that "income" is limited to a corporate profit. This is not what the Court said.

In Merchants’ Loan & Trust Company v. Smientanka, 255 U.S. 509 (1921), the Court said that the Corporation Excise Tax Act of August 5, 1909, defined the word income. The Court stated it was obvious that the decisions written in developing the definition of the word "income" as used in the Corporation Excise Tax Act of 1909, has the same meaning and content in the Income Tax Acts of 1913, 1916, and 1917. This does not mean that income is only corporate profit.

As the Court stated in Eisner v. Macomber, 252 U.S. 189 (1920), the term “income” is defined for income tax purposes as gain derived from capital, from labor, or from both combined and includes profit gained through the sale or conversion of capital assets. One further note on the definition of the

word "income." The Court in Merchants' stated, "In determining the definition of the word 'income' thus arrived at, this Court has consistently refused to enter into the refinements of lexicographers or economists, and has approved, in the definitions quoted, what it believed to be the commonly understood meaning of the term which must have been in the minds of the people when they adopted the Sixteenth Amendment to the Constitution."

The Supreme Court of Idaho also stated that the terms used in statutes are given their plain, ordinary meaning. The plain, ordinary meaning of a term can be found in the dictionary definition of the term. See Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993). Webster's New Collegiate Dictionary defines income as a gain or recurrent benefit usually measured in money that derives from capital or labor.

Since Eisner, the courts have consistently held that wages or "compensation for labor" is income for income tax purposes. Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir. 1986); United States v. Lawson, 670 F.2d 923 (10th Cir. 1982); United States v. Buras, 633 F.2d 1356 (9th Cir. 1980); Mitchell v. Agents of State, 105 Idaho 419, 425 (1983); State v. Staples, 112 Idaho 105, 107 (Ct. App. 1986); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 575 (Ct. App. 1986).

Idaho Code § 63-3022 defined the term "taxable income" to mean "'taxable income' as defined in section 63 of the Internal Revenue Code, adjusted as provided" in the Idaho Income Tax Act. Section 63 of the Internal Revenue Code defines taxable income as "gross income minus the deductions allowed under this chapter." Section 61 of the Internal Revenue Code provides that, except as otherwise provided in Subtitle A of the Internal Revenue Code, "gross income means all income from whatever source derived." Idaho has incorporated these provisions in its tax laws.

63-3002. Declaration of intent. It is the intent of the legislature by the adoption of this act, **insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code** relating to the measurement of taxable income, to the end that the

taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; **to impose a tax on residents of this state measured by Idaho taxable income wherever derived** and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. **All of the foregoing is subject to modifications in Idaho law** including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

Idaho Code § 63-3002 (emphasis added). As incorporated into the Income Tax Act by Idaho Code § 63-3002, an individual is subject to Idaho income tax on his income from all sources, unless express federal or state exemptions, adjustments, or limitations apply. The petitioner has not provided any information to establish that his income is exempt under the Internal Revenue Code or under any other law.

Courts have held that the characterization of a person's status as a natural born citizen or "sovereign" does not change his or her state residency status for income tax purposes. United States v. Hanson, 2 F.3d 942, 945 (9th Cir. 1993); Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); United States v. Dawes, 874 F.2d 746, 750-751 (10th Cir. 1989); United States v. Studley, 783 F.2d 934, 937 & n.3 (9th Cir. 1986); Minovich v. Commissioner of Internal Revenue, 1994 T.C. Memo. 89. Domicile itself affords a basis for a state's individual income tax. People of State of New York, ex rel. Cohn v. Graves, 300 U.S. 308, 312-13 (1937) "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protections of its laws are inseparable from responsibility for sharing the costs of government."

Idaho Code § 63-3013 states that any individual who is domiciled in the state of Idaho is a resident. The petitioner does not dispute that he lived in [Redacted], Idaho, for the entire taxable year and was otherwise domiciled in [Redacted]. As set forth in the statute, the petitioner is an Idaho resident.

The Idaho income tax filing requirements are set out in the Idaho statute. Idaho Code § 63-3030 provides that every resident who has gross income, as defined by Section 61(a) of the Internal Revenue Code, exceeding a specified dollar amount is required to file an Idaho individual income tax return. The filing threshold amount for a single individual was: \$6,800 for the taxable year 1997; \$6,950 for the taxable year 1998, and \$7,050 for the taxable year 1999. The petitioner's income information reported on Forms W-2 and 1099 demonstrates the petitioner received gross income in excess of these statutory threshold amounts of income that triggers a single person's obligation to file an Idaho return.

Persons who are required to file an Idaho individual income tax return must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024. Contrary to the petitioner's arguments, he had taxable income subject to Idaho individual income tax. In sum, the petitioner was required to file an Idaho individual income tax return and pay the Idaho income tax that was correctly due on those returns.

Idaho law directs the Commission to determine the correct amount of tax a person owes and to issue a Notice of Deficiency Determination when a deficiency is found.

63-3045. Notice of Redetermination or Deficiency -- Interest.

(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery . . .

As stated above, the specialist found the information reported by the petitioner's employers and other persons on the Forms W-2 and 1099 indicated the petitioner was required to file and report his income. Because the petitioner was domiciled in Idaho and was an Idaho resident, the specialist correctly determined the petitioner's income was subject to Idaho individual income tax, prepared provisional returns, and issued a Notice of Deficiency Determination.

It is well settled in Idaho that provisional returns determined by the Idaho State Tax Commission are presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioner to show that the tax deficiency is erroneous. Id. The petitioner failed to show that the provisional returns prepared by the Tax Commission were incorrect. Therefore, based on the information available, the Tax Commission finds the provisional returns to be a fair representation of the petitioner's taxable income for the taxable years in question and that the amounts shown due on the Notice of Deficiency Determination are true and correct.

WHEREFORE, the Notice of Deficiency Determination dated January 3, 2002, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1997	\$1,131	\$283	\$362	\$1,776
1998	1,204	301	293	1,798
1999	397	99	68	<u>564</u>
			TOTAL DUE	<u>\$4,138</u>

Interest is calculated through June 28, 2002, and will continue to accrue at the rate of \$0.53 per day until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[Redacted]

Receipt No. [Redacted]

ADMINISTRATIVE ASSISTANT 1